IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 519 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNION OF INDIA & 2 - Appellant(s)
Versus
KASHIBEN WD/O.CHHAGANBHAI MANGABHAI - Defendant(s)

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Appearance :
MR RM VIN for Appellant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellants have challenged the judgment and award of the learned Judge of the Labour Court and Ex. Officio Commissioner for Workmen's Compensation, Surat passed in Fatal Application No.15 of 1987 dated 09.08.1990.

2.0 The brief facts of the case are that the

husband of the opponent was working with the appellants as 'Switchman' at Station No.3, Udhana. On 23.04.1983, when deceased went to his office to inquire about his working hours, he was dashed by a train and expired on the spot. It was the case of the widow of the deceased i.e. present opponent before the Tribunal that after the death of her husband, though, she had requested the appellants several times to pay compensation, no actions were taken by the appellants. Therefore, the opponent preferred an application claiming compensation.

2.1 In the said application, after hearing the parties, the learned Judge passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellants has submitted that the learned Judge ought to have considered the fact that there is no direct

evidence to suggest that on 23.04.1983, the deceased went to his office to inquire about his working hours. He has further stated that the learned Judge has committed an error in stipulating that in case the appellants fail to satisfy the award within sixty days, they shall have to pay compensation at rate of twelve per cent interest and fifty per cent amount of the awarded amount towards penalty.

4.0 Heard, learned Advocate for the appellants. Though, served none appears on behalf of the defendant. By passing the impugned judgment and award, the learned Judge awarded an amount of Rs.19,200/- with interest at the rate of six per cent and Rs.250/- towards costs. The learned Judge, in the impugned judgment and award, has further observed that if the appellants fail to satisfy the claim within a period of sixty days, then, they shall be liable to pay the awarded amount with twelve per cent

interest and fifty per cent of the awarded amount towards penalty.

4.1 On perusal of evidence of the opponent-Kashiben (Exh.10) it transpires that her husband was on medical leave from 09.04.1983. When the deceased went to his office on 23.04.1983, to resume his duty he met with the alleged accident and expired on the spot. The fact that the accident in question was registered by the railway police and pursuant to that the dead body of the deceased was sent to Surat for post-mortem, is supported by the document produced at Exh.9/1. In view of the above facts, there is no reason to disbelieve the story put forward by the widow of the deceased that her husband died during the course of his duty, on the office premises. Here, it would be relevant to refer to a judgment of the Apex Court passed in the case of ***"General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes"*** reported in AIR 1964 SC 193(V 51

C 17)wherein at Para-12 the Apex Court has held as under,

> "**(12).** Under S.(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool' signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend, on the circumstances of a given case. As employment may end or may begin not only when the employee beings to work or leave his tools but also when he used the means of access and egress to and from the place of employment..."

4.2 Hence, in view of the fact that the alleged accident was registered by the railway police and pursuant to that the body of the deceased was sent for post-mortem and in view of the above principle laid down by the Apex Court, I am in complete agreement with the view taken by

the learned Judge that the deceased expired during the course of his duty and on office premises. Hence, widow of the deceased-Kashiben i.e. opponent is entitled for compensation.

4.3 It may be noted that while passing the impugned judgment and award, the learned judge directed the opponent to satisfy the claim within sixty days or to pay the awarded amount at the rate of twelve per cent interest with fifty per cent of the awarded amount as penalty. Hence, it would be relevant to refer to Section 4A of the Workmen's Compensation Act, 1923 which reads as under,

> "[4A. **Compensation to be paid when due and penalty for default]**- (1) Compensation under Section 4 shall be paid as soon as it falls due.
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> (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be despi9ted with the

Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

[(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it feel due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) **if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:**

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

4.4 In view of the fact that pursuant to the death of her husband, the opponent had sent a notice dated 02.07.1987 (Exh.9/2) to the

appellants claiming amount of compensation and which was allegedly received by the appellants, the appellants ought to have paid the compensation within one month from the date it fells due. Since, the appellants have failed to satisfy the claim within stipulated time as required under the Act, the learned Judge is justified in imposing penalty on the appellants.

4.5 As regards the direction of the learned judge to pay interest at the rate of twelve per cent, the same is on higher side and is contrary to provisions of Workman Compensation Act, 1923. Hence, the direction of the learned Judge to pay the awarded amount with twelve per cent interest and fifty per cent of the awarded amount towards penalty, is requires to be quashed and set aside.

4.6 In above view of the matter, I am of the opinion that the ends of the justice would met if the appellants are made to pay Rs.19,200/- with

six per cent interest and fifty per cent of the awarded amount towards penalty without interest, to the opponent.

5.0 In the result, the appeal is partly allowed. The appellants shall pay an amount of Rs.19,200/- with six per cent interest and fifty per cent of the awarded amount towards penalty without interest, to the opponent-Kashiben. The award of the learned Judge of the Labour Court and Ex. Officio Commissioner for Workmen's Compensation, Surat passed in Fatal Application No.15 of 1987 dated 09.08.1990 is modified to the aforesaid extent. Rest of the award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

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